

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-11934-GAO

NOAH GREENBERG,
Plaintiff,

v.

TOWN OF FALMOUTH and
GANNETT FLEMING, INC.,
Defendants.

ORDER
June 2, 2006

O'TOOLE, D.J.

The plaintiff Noah Greenberg and the defendant Gannett Fleming, Inc. have each filed motions for summary judgment. A principal issue between these parties is whether Gannett Fleming infringed Greenberg's copyright. As the cross-motions and related briefing indicate, resolution of that issue will depend in large part on whether Gannett Fleming "copied" Greenberg's architectural plans. Since direct proof of copying is not likely, the plaintiff proposes that copying may be inferred from, among other things, the substantial similarity between Gannett Fleming's later drawings and Greenberg's earlier copyrighted drawings. The degree of similarity is a question of fact that cannot be resolved on these motions for summary judgment.

Greenberg's motion also seeks judgment against the defendant Town of Falmouth. A central issue in the controversy between these parties is whether Greenberg impliedly granted the Town a non-exclusive license to use his drawings. That issue also is a factual one that cannot be resolved on a motion for summary judgment where, as here, relevant facts are in dispute.

Accordingly, the pending cross motions (Docket Nos. 35 and 39) are each DENIED.

It is SO ORDERED.

June 2, 2006

DATE

\s\ George A. O'Toole, Jr.

DISTRICT JUDGE